

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 30, 2005

SENATE BILL

No. 950

Introduced by Senator Torlakson

February 22, 2005

An act to amend Sections 65863.11 and 65863.13 of the Government Code, to amend Sections 33760 and 34312 of the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 950, as amended, Torlakson. Housing.

(1) Existing law authorizes a redevelopment agency to issue negotiable revenue bonds for the purpose of making or purchasing mortgage or construction loans or making loans to a qualified mortgage lender, to finance residential construction.

This bill would require that units reserved for occupancy by low- or very low income households and financed with proceeds of bonds issued on or after January 1, 2006, remain available following the expiration or termination of the qualified residential project period, except as specified, to an eligible household occupying a reserved unit, at a rent not greater than the amount set forth by the regulatory agreement entered into by the redevelopment agency before the date of expiration or termination, until the earliest of certain events.

(2) Existing law provides for the creation of housing authorities of counties and cities and authorizes a housing authority to issue bonds for any of its corporate purposes, which include providing financing for the acquisition, construction, rehabilitation, refinancing, or development of dwelling accommodations for persons of low income.

This bill would require that units reserved for occupancy by low- or very low income households and financed with proceeds of bonds issued on or after January 1, 2006, remain available following the expiration or termination of the qualified residential project period, except as specified, to an eligible household occupying a reserved unit, at a rent not greater than the amount set forth by the regulatory agreement entered into by the housing authority before the date of expiration or termination, until the earliest of certain events.

(3) Existing insurance tax law, the Personal Income Tax Law, and the Corporation Tax Law allow, in modified conformity to federal income tax laws, taxpayers a credit against the taxes imposed by those laws for providing low-income housing, and require the California Tax Credit Allocation Committee to allocate the credit in accordance with specified criteria.

This bill would expand the categories of housing projects with respect to which a credit is allowed; by broadening the category of at-risk of conversion housing; *and* extending the eligible time period in which expirations of specified subsidies may occur, ~~and by allowing buildings held by certain tax-exempt entities to be eligible.~~

(4) Existing law, until January 1, 2011, requires, prior to the anticipated date of the termination of a subsidy contract, expiration of rental restrictions, or prepayment on an assisted housing development, as defined, that the owner provide a notice of the proposed change to each affected tenant household residing in the assisted housing development and to the affected public entities. An owner is not required to provide the notice if specified conditions contained in a regulatory agreement has been recorded against the property.

This bill would modify those conditions with respect to rent increases on assisted and unassisted units, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65863.11 of the Government Code, as
- 2 amended by Chapter 110 of the Statutes of 2004, is amended to
- 3 read:
- 4 65863.11. (a) Terms used in this section shall be defined as
- 5 follows:

1 (1) “Assisted housing development” and “development” mean
2 a multifamily rental housing development as defined in
3 paragraph (3) of subdivision (a) of Section 65863.10.

4 (2) “Owner” means an individual, corporation, association,
5 partnership, joint venture, or business entity that holds title to an
6 assisted housing development.

7 (3) “Tenant” means a tenant, subtenant, lessee, sublessee, or
8 other person legally in possession or occupying the assisted
9 housing development.

10 (4) “Tenant association” means a group of tenants who have
11 formed a nonprofit corporation, cooperative corporation, or other
12 entity or organization, or a local nonprofit, regional, or national
13 organization whose purpose includes the acquisition of an
14 assisted housing development and that represents the interest of
15 at least a majority of the tenants in the assisted housing
16 development.

17 (5) “Low or moderate income” means having an income as
18 defined in Section 50093 of the Health and Safety Code.

19 (6) “Very low income” means having an income as defined in
20 Section 50105 of the Health and Safety Code.

21 (7) “Local nonprofit organizations” means not-for-profit
22 corporations organized pursuant to Division 2 (commencing with
23 Section 5000) of Title 1 of the Corporations Code, that have as
24 their principal purpose the ownership, development, or
25 management of housing or community development projects for
26 persons and families of low or moderate income and very low
27 income, and which have a broadly representative board, a
28 majority of whose members are community based and have a
29 proven track record of local community service.

30 (8) “Local public agencies” means housing authorities,
31 redevelopment agencies, or any other agency of a city, county, or
32 city and county, whether general law or chartered, which are
33 authorized to own, develop, or manage housing or community
34 development projects for persons and families of low or
35 moderate income and very low income.

36 (9) “Regional or national organizations” means not-for-profit,
37 charitable corporations organized on a multicounty, state, or
38 multistate basis that have as their principal purpose the
39 ownership, development, or management of housing or

1 community development projects for persons and families of low
2 or moderate income and very low income.

3 (10) “Regional or national public agencies” means
4 multicounty, state, or multistate agencies that are authorized to
5 own, develop, or manage housing or community development
6 projects for persons and families of low or moderate income and
7 very low income.

8 (11) “Use restriction” means any federal, state, or local statute,
9 regulation, ordinance, or contract that, as a condition of receipt of
10 any housing assistance, including a rental subsidy, mortgage
11 subsidy, or mortgage insurance, to an assisted housing
12 development, establishes maximum limitations on tenant income
13 as a condition of eligibility for occupancy of the units within a
14 development, imposes any restrictions on the maximum rents that
15 could be charged for any of the units within a development; or
16 requires that rents for any of the units within a development be
17 reviewed by any governmental body or agency before the rents
18 are implemented.

19 (12) “Profit-motivated organizations and individuals” means
20 individuals or two or more persons organized pursuant to
21 Division 1 (commencing with Section 100) of Title 1 of, Division
22 3 (commencing with Section 1200) of Title 1 of, or Division 1
23 (commencing with Section 15001) of Title 2 of, the Corporations
24 Code, that carry on as a business for profit.

25 (13) “Department” means the Department of Housing and
26 Community Development.

27 (14) “Offer to purchase” means an offer from a qualified or
28 nonqualified entity that is nonbinding on the owner.

29 (15) “Expiration of rental restrictions” has the meaning given
30 in paragraph (5) of subdivision (a) of Section 65863.10.

31 (b) An owner of an assisted housing development shall not
32 terminate a subsidy contract or prepay the mortgage pursuant to
33 Section 65863.10, unless the owner or its agent shall first have
34 provided each of the entities listed in subdivision (d) an
35 opportunity to submit an offer to purchase the development, in
36 compliance with subdivisions (g) and (h). An owner of an
37 assisted housing development in which there will be the
38 expiration of rental restrictions must also provide each of the
39 entities listed in subdivision (d) an opportunity to submit an offer
40 to purchase the development, in compliance with subdivisions (g)

1 and (h). An owner who meets the requirements of Section
2 65863.13 shall be exempt from this requirement.

3 (c) An owner of an assisted housing development shall not
4 sell, or otherwise dispose of, the development at any time within
5 the five years prior to the expiration of rental restrictions or at
6 any time if the owner is eligible for prepayment or termination
7 within five years unless the owner or its agent shall first have
8 provided each of the entities listed in subdivision (d) an
9 opportunity to submit an offer to purchase the development, in
10 compliance with subdivisions (g) and (h). An owner who meets
11 the requirements of Section 65863.13 shall be exempt from this
12 requirement.

13 (d) The entities to whom an opportunity to purchase shall be
14 provided include only the following:

15 (1) The tenant association of the development.

16 (2) Local nonprofit organizations and public agencies.

17 (3) Regional or national nonprofit organizations and regional
18 or national public agencies.

19 (4) Profit-motivated organizations or individuals.

20 (e) For the purposes of this section, to qualify as a purchaser
21 of an assisted housing development, an entity listed in
22 subdivision (d) shall do all of the following:

23 (1) Be capable of managing the housing and related facilities
24 for its remaining useful life, either by itself or through a
25 management agent.

26 (2) Agree to obligate itself and any successors in interest to
27 maintain the affordability of the assisted housing development
28 for households of very low, low, or moderate income for either a
29 30-year period from the date that the purchaser took legal
30 possession of the housing or the remaining term of the existing
31 federal government assistance specified in subdivision (a) of
32 Section 65863.10, whichever is greater. The development shall
33 be continuously occupied in the approximate percentages that
34 those households who have occupied that development on the
35 date the owner gave notice of intent or the approximate
36 percentages specified in existing use restrictions, whichever is
37 higher. This obligation shall be recorded prior to the close of
38 escrow in the office of the county recorder of the county in which
39 the development is located and shall contain a legal description
40 of the property, indexed to the name of the owner as grantor. An

owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post

1 a copy of the notice in a conspicuous place in the common area
2 of the development.

3 (2) If the owner already has a bona fide offer to purchase from
4 an entity prior to January 1, 2001, at the time the owner decides
5 to sell or otherwise dispose of the development, the owner shall
6 not be required to comply with this subdivision. However, the
7 owner shall notify the department of this exemption and provide
8 the department a copy of the offer.

9 (h) The initial notice of a bona fide opportunity to submit an
10 offer to purchase shall contain all of the following:

11 (1) A statement that the owner will make available to each of
12 the type of entities listed in subdivision (d), within 15 business
13 days of receiving a request therefor, the terms of assumable
14 financing, if any; the terms of the subsidy contract, if any; and
15 proposed improvements to the property to be made by the owner
16 in connection with the sale, if any.

17 (2) A statement that each of the type of entities listed in
18 subdivision (d) has the right to purchase the development under
19 this section.

20 (3) A statement that the owner will make available to each of
21 the type of entities listed in subdivision (d), within 15 business
22 days of receiving a request therefor, itemized lists of monthly
23 operating expenses, capital improvements as determined by the
24 owner made within each of the two preceding calendar years, the
25 amount of project reserves, and copies of the two most recent
26 financial and physical inspection reports on the development, if
27 any, filed with the federal, state, or local agencies.

28 (4) A statement that the owner will make available to each of
29 the entities listed in subdivision (d), within 15 business days of a
30 request therefor, the most recent rent roll listing the rent paid for
31 each unit and the subsidy, if any, paid by a governmental agency
32 as of the date the notice of intent was made pursuant to Section
33 65863.10, and a statement of the vacancy rate at the development
34 for each of the two preceding calendar years.

35 (5) A statement that the owner has satisfied all notice
36 requirements pursuant to subdivision (b) of Section 65863.10,
37 unless the notice of opportunity to submit an offer to purchase is
38 delivered more than 12 months prior to the anticipated date of
39 termination, prepayment, or expiration of rental restrictions.

1 (i) If a qualified entity elects to purchase an assisted housing
2 development, it shall make a bona fide offer to purchase the
3 development. A qualified entity's bona fide offer to purchase
4 shall identify whether it is a tenant association, nonprofit
5 organization, public agency, or profit-motivated organizations or
6 individuals and shall certify, under penalty of perjury, that it is
7 qualified pursuant to subdivision (e). During the first 180 days
8 from the date of an owner's bona fide notice of the opportunity to
9 submit an offer to purchase, an owner shall accept a bona fide
10 offer to purchase only from a qualified entity. During this
11 180-day period, the owner shall not accept offers from any other
12 entity.

13 (j) When a bona fide offer to purchase has been made to an
14 owner, and the offer is accepted, a purchase agreement shall be
15 executed.

16 (k) Either the owner or the qualified entity may request that
17 the fair market value of the property, as a development, be
18 determined by an independent appraiser qualified to perform
19 multifamily housing appraisals, who shall be selected and paid
20 by the requesting party. All appraisers shall possess
21 qualifications equivalent to those required by the members of the
22 Appraisers Institute. This appraisal shall be nonbinding on either
23 party with respect to the sales price of the development offered in
24 the bona fide offer to purchase, or the acceptance or rejection of
25 the offer.

26 (l) During the 180-day period following the initial 180-day
27 period required pursuant to subdivision (i), an owner may accept
28 an offer from a person or an entity that does not qualify under
29 subdivision (e). This acceptance shall be made subject to the
30 owner providing each qualified entity that made a bona fide offer
31 to purchase the first opportunity to purchase the development at
32 the same terms and conditions as the pending offer to purchase,
33 unless these terms and conditions are modified by mutual
34 consent. The owner shall notify in writing those qualified entities
35 of the terms and conditions of the pending offer to purchase, sent
36 by registered or certified mail, return receipt requested. The
37 qualified entity shall have 30 days from the date the notice is
38 mailed to submit a bona fide offer to purchase and that offer shall
39 be accepted by the owner. The owner shall not be required to
40 comply with the provisions of this subdivision if the person or

1 the entity making the offer during this time period agrees to
2 maintain the development for persons and families of very low,
3 low, and moderate income in accordance with paragraph (2) of
4 subdivision (e). The owner shall notify the department regarding
5 how the buyer is meeting the requirements of paragraph (2) of
6 subdivision (e).

7 (m) This section shall not apply to any of the following: a
8 government taking by eminent domain or negotiated purchase; a
9 forced sale pursuant to a foreclosure; a transfer by gift, devise, or
10 operation of law; a sale to a person who would be included
11 within the table of descent and distribution if there were to be a
12 death intestate of an owner; or an owner who certifies, under
13 penalty of perjury, the existence of a financial emergency during
14 the period covered by the first right of refusal requiring
15 immediate access to the proceeds of the sale of the development.
16 The certification shall be made pursuant to subdivision (p).

17 (n) Prior to the close of escrow, an owner selling, leasing, or
18 otherwise disposing of a development to a purchaser who does
19 not qualify under subdivision (e) shall certify under penalty of
20 perjury that the owner has complied with all provisions of this
21 section and Section 65863.10. This certification shall be recorded
22 and shall contain a legal description of the property, shall be
23 indexed to the name of the owner as grantor, and may be relied
24 upon by good faith purchasers and encumbrances for value and
25 without notice of a failure to comply with the provisions of this
26 section.

27 Any person or entity acting solely in the capacity of an escrow
28 agent for the transfer of real property subject to this section shall
29 not be liable for any failure to comply with this section unless the
30 escrow agent either had actual knowledge of the requirements of
31 this section or acted contrary to written escrow instructions
32 concerning the provisions of this section.

33 (o) The department shall undertake the following
34 responsibilities and duties:

35 (1) Maintain a form containing a summary of rights and
36 obligations under this section and make that information
37 available to owners of assisted housing developments as well as
38 to tenant associations, local nonprofit organizations, regional or
39 national nonprofit organizations, public agencies, and other

1 entities with an interest in preserving the state's subsidized
2 housing.

3 (2) Compile, maintain, and update a list of entities in
4 subdivision (d) that have either contacted the department with an
5 expressed interest in purchasing a development in the subject
6 area or have been identified by the department as potentially
7 having an interest in participating in a right-of-first-refusal
8 program. The department shall publicize the existence of the list
9 statewide. Upon receipt of a notice of intent under Section
10 65863.10, the department shall make the list available to the
11 owner proposing the termination, prepayment, or removal of
12 government assistance or to the owner of an assisted housing
13 development in which there will be the expiration of rental
14 restrictions. If the department does not make the list available at
15 any time, the owner shall only be required to send a written copy
16 of the opportunity to submit an offer to purchase notice to the
17 qualified entities which directly contact the owner and to post a
18 copy of the notice in the common area pursuant to subdivision
19 (g).

20 (p) (1) The provisions of this section may be enforced either
21 in law or in equity by any qualified entity entitled to exercise the
22 opportunity to purchase and right of first refusal under this
23 section, that has been adversely affected by an owner's failure to
24 comply with this section.

25 (2) An owner may rely on the statements, claims, or
26 representations of any person or entity that the person or entity is
27 a qualified entity as specified in subdivision (d), unless the owner
28 has actual knowledge that the purchaser is not a qualified entity.

29 (3) If the person or entity is not an entity as specified in
30 subdivision (d), that fact, in the absence of actual knowledge as
31 described in paragraph (2), shall not give rise to any claim
32 against the owner for a violation of this section.

33 (q) It is the intent of the Legislature that the provisions of this
34 section are in addition to, but not preemptive of, applicable
35 federal laws governing the sale, or other disposition of a
36 development that would result in either (1) a discontinuance of
37 its use as an assisted housing development or (2) the termination
38 or expiration of any low-income use restrictions that apply to the
39 development.

1 (r) This section shall remain in effect only until January 1,
2 2011, and as of that date is repealed, unless a later enacted
3 statute, which is enacted on or before January 1, 2011, deletes or
4 extends that date.

5 SEC. 2. Section 65863.13 of the Government Code, as
6 amended by Chapter 110 of the Statutes of 2004, is amended to
7 read:

8 65863.13. (a) An owner shall not be required to provide a
9 notice as required by Section 65863.10 or Section 65863.11 if all
10 of the following conditions are contained in a regulatory
11 agreement that has been recorded against the property:

12 (1) No low-income tenant whose rent was restricted and or
13 subsidized and who resides in the development within 12 months
14 of the date that the rent restrictions are, or subsidy is, scheduled
15 to expire or terminate shall be involuntarily displaced on a
16 permanent basis as a result of the action by the owner unless the
17 tenant has breached the terms of the lease.

18 (2) The owner shall accept and fully utilize all renewals of
19 project-based assistance under Section 8 of the United States
20 Housing Act of 1937, if available, and if that assistance is at a
21 level to maintain the project's fiscal viability. The property shall
22 be deemed fiscally viable if the rents permitted under the terms
23 of the assistance are not less than the regulated rent levels
24 established pursuant to paragraph (7).

25 (3) The owner shall accept all enhanced Section 8 vouchers, if
26 the tenants receive them, and all other Section 8 vouchers for
27 future vacancies.

28 (4) The owner shall not terminate a tenancy of a low-income
29 household at the end of a lease term without demonstrating a
30 breach of the lease.

31 (5) The owner may, in selecting eligible applicants for
32 admission, utilize criteria that permit consideration of the amount
33 of income, as long as the owner adequately considers other
34 factors relevant to an applicant's ability to pay rent.

35 (6) ~~For assisted housing developments in which only a portion~~
36 ~~of the units are assisted pursuant to described in paragraph (3) of~~
37 ~~subdivision (a) of Section 65863.10, a new regulatory agreement,~~
38 ~~consistent with this section, is recorded that restricts the rents of~~
39 ~~the assisted units to an equal or greater level of affordability than~~
40 ~~under the previously existing agreement and incomes of the~~

1 *previously restricted units, except as provided in paragraph (7),*
2 *(8), or (9), to an equal or greater level of affordability than*
3 *previously required so that—~~they~~ the units are affordable to*
4 *households at the same or a lower percentage of area median*
5 *income.*

6 (7) For housing developments that have units with
7 project-based ~~Section 8~~ *rental* assistance upon the effective date
8 of prepayment and subsequently become unassisted by any form
9 of ~~Section 8~~ *rental* assistance, rents shall not exceed 30 percent
10 of 60 percent of the area median income. If any form of ~~Section~~
11 ~~8~~ *rental* assistance is or becomes available, the owner shall apply
12 for and accept, if awarded, the ~~Section 8~~ *rental* assistance. Rent
13 and occupancy levels shall then be set in accordance with federal
14 regulations for the ~~Section 8~~ *rental assistance* program.

15 (8) For ~~unassisted units and units~~ *units* that do not have
16 project-based ~~Section 8~~ *rental* assistance upon the effective date
17 of prepayment of a federally insured, federally held, or formerly
18 federally insured or held mortgage and subsequently remain
19 unassisted or become unassisted by any form of ~~Section 8~~ *rental*
20 assistance, rents shall not exceed the greater of (i) 30 percent of
21 50 percent of the area median income, or (ii) for projects insured
22 under Section 241(f) of the National Housing Act, the regulated
23 rents, expressed as a percentage of area median income. If any
24 form of ~~Section 8~~ *rental* assistance is or becomes available, the
25 owner shall apply for and accept, if awarded, the ~~Section 8~~ *rental*
26 assistance. Rent and occupancy levels shall then be set in
27 accordance with federal regulations governing the ~~Section 8~~
28 *rental assistance* program.

29 (9) If, upon the recordation of the new regulatory agreement,
30 any unit *governed by regulatory agreement* is occupied by a
31 household whose income exceeds the applicable limit ~~but was~~
32 ~~within the applicable limit at initial occupancy of the unit~~, the
33 rent for that household shall not exceed 30 percent of that
34 household's adjusted income, provided that household's rent
35 shall not be increased by more than 10 percent annually.

36 ~~(10) Notwithstanding paragraph (7), (8), or (9), upon the~~
37 ~~termination of the restrictions applicable to all assisted housing~~
38 ~~developments described in subparagraph (E), (F), or (G) of~~
39 ~~paragraph (3) of subdivision (a) of Section 65863.10, the~~
40 ~~allowable rents and incomes for the units previously restricted by~~

1 ~~any such program shall continue to apply to those units as if~~
2 ~~those restrictions had not terminated.~~

3 (b) As used in this section, “regulatory agreement” means an
4 agreement with a governmental agency for the purposes of any
5 governmental program, which agreement applies to the
6 development that would be subject to the notice requirement in
7 Section 65863.10 and which obligates the owner and any
8 successors in interest to maintain the affordability of the assisted
9 housing development for households of very low, low, or
10 moderate income for the greater of the term of the existing
11 federal, state, or local government assistance specified in
12 subdivision (a) of Section 65863.10 or 30 years.

13 ~~(c) For purposes of the section, “unassisted units” means those~~
14 ~~units occupied by households whose income exceeds 60 percent~~
15 ~~of area median income, adjusted by household size, at the time a~~
16 ~~new regulatory agreement is recorded in accordance with this~~
17 ~~section.~~

18 ~~(d)~~

19 (c) Section 65863.11 shall not apply to any development for
20 which the owner is exempt from the notice requirements of
21 Section 65863.10 pursuant to this section.

22 ~~(e)~~

23 (d) This section shall remain in effect only until January 1,
24 2011, and as of that date is repealed, unless a later enacted
25 statute, that is enacted before January 1, 2011, deletes or extends
26 that date.

27 SEC. 3. Section 33760 of the Health and Safety Code is
28 amended to read:

29 33760. (a) Within its territorial jurisdiction, an agency may
30 determine the location and character of any residential
31 construction to be financed under this chapter and may make
32 mortgage or construction loans to participating parties through
33 qualified mortgage lenders, or purchase mortgage or construction
34 loans without premium made by qualified mortgage lenders to
35 participating parties, or make loans to qualified mortgage
36 lenders, for financing any of the following:

37 (1) Residential construction within a redevelopment project
38 area.

39 (2) Residential construction of residences in which the
40 dwelling units are committed, for the period during which the

1 loan is outstanding, for occupancy by persons or families who are
2 eligible for financial assistance specifically provided by a
3 governmental agency for the benefit of occupants of the
4 residence.

5 (3) To the extent required by Section 103A of Title 26 of the
6 United States Code, as amended, to maintain the exemption from
7 federal income taxes of interest on bonds or notes issued by the
8 agency under this chapter, residences located within targeted
9 areas, as defined by Section 103(b)(12)(A) of Title 26 of the
10 United States Code. Any loans to qualified mortgage lenders
11 shall be made under terms and conditions which, in addition to
12 other provisions as determined by the agency, shall require the
13 qualified mortgage lender to use all of the net proceeds thereof,
14 directly or indirectly, for the making of mortgage loans or
15 construction loans in an appropriate principal amount equal to the
16 amount of the net proceeds. Those mortgage loans may, but need
17 not, be insured.

18 (b) (1) Not less than 20 percent (15 percent in target areas) of
19 the units in any residential project financed pursuant to this
20 section on or after January 1, 1986, shall be occupied by, or made
21 available to, individuals of low and moderate income, as defined
22 by Section 103(b)(12)(C) of Title 26 of the United States Code.
23 If the sponsor elects to establish a base rent for units reserved for
24 lower income households, the base rents shall be adjusted for
25 household size, as determined pursuant to Section 8 of the United
26 States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its
27 successor, for a family of one person in the case of a studio unit,
28 two persons in the case of a one-bedroom unit, three persons in
29 the case of a two-bedroom unit, four persons in the case of a
30 three-bedroom unit, and five persons in the case of a
31 four-bedroom unit.

32 (2) Not less than one-half of the units described in paragraph
33 (1) shall be occupied by, or made available to, very low income
34 households, as defined by Section 50105. The rental payments
35 for those units paid by the persons occupying the units
36 (excluding any supplemental rental assistance from the state, the
37 federal government, or any other public agency to those persons
38 or on behalf of those units) shall not exceed the amount derived
39 by multiplying 30 percent times 50 percent of the median
40 adjusted gross income for the area, adjusted for family size, as

1 determined pursuant to Section 8 of the United States Housing
2 Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family
3 of one person in the case of a studio unit, two persons in the case
4 of a one-bedroom unit, three persons in the case of a
5 two-bedroom unit, four persons in the case of a three-bedroom
6 unit, and five persons in the case of a four-bedroom unit.

7 (c) Units required to be reserved for occupancy as provided in
8 subdivision (b) and financed with the proceeds of bonds issued
9 on or after January 1, 1986, shall remain occupied by, or made
10 available to, those persons until the bonds are retired.

11 (d) (1) When issuing tax-exempt bonds for purposes of this
12 section, the regulatory agreement entered into by the agency shall
13 require that following the expiration or termination of the
14 qualified project period, except in the event of foreclosure and
15 redemption of the bonds, deed in lieu of foreclosure, eminent
16 domain, or action of a federal agency preventing enforcement,
17 units required to be reserved for occupancy for low- or very low
18 income households and financed with proceeds of bonds issued
19 on or after January 1, 2006, shall remain available to any eligible
20 household occupying a reserved unit at the date of expiration or
21 termination, at a rent not greater than the amount set forth by the
22 regulatory agreement prior to the date of expiration or
23 termination, until the earliest of any of the following occur:

24 (A) The household's income exceeds 140 percent of the
25 maximum eligible income specified in the regulatory agreement
26 for reserved units.

27 (B) The household voluntarily moves or is evicted for "good
28 cause." "Good cause" for the purposes of this section, means the
29 nonpayment of rent or allegation of facts necessary to prove
30 major, or repeated minor, violations of material provisions of the
31 occupancy agreement which detrimentally affect the health and
32 safety of other persons or the structure, the fiscal integrity of the
33 development, or the purposes or special programs of the
34 development.

35 (C) Thirty years after the date of the commencement of the
36 qualified project period.

37 (D) The sponsor pays the relocation assistance and benefits to
38 tenants as provided in subdivision (b) of Section 7264 of the
39 Government Code.

(2) As used in this subdivision, “qualified project period” shall have the meaning specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

(e) This section shall become operative January 1, 1996.

SEC. 4. Section 34312 of the Health and Safety Code is amended to read:

34312. Within its area of operation, an authority may undertake any of the following:

(a) Prepare, carry out, acquire, lease, and operate housing projects for persons of low income, as authorized by this chapter, and housing developments for persons of low income, as authorized by Part 3 (commencing with Section 50900) of Division 31.

(b) Provide for the construction, reconstruction, improvement, alteration, or repair of all or part of any housing project.

(c) Provide leased housing to persons of low income.

(d) (1) Provide financing for the acquisition, construction, rehabilitation, refinancing, or development of dwelling accommodations for persons of low income, and for other persons when acting pursuant to the authorization contained in Part 13 (commencing with Section 37910) of this division or Part 3 (commencing with Section 50900) of Division 31, subject only to the limitations on income of borrowers or residents prescribed by the statutory provisions under which the authority is acting. With respect to financing activities conducted pursuant to Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31, the authority shall obtain certification as a qualified mortgage lender pursuant to Section 50094.

(2) When issuing tax-exempt bonds for purposes of this section, the regulatory agreement entered into by the agency shall require that following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy for low- or very low income households and financed with proceeds of bonds issued

1 on or after January 1, 2006, shall remain available to any eligible
2 household occupying a reserved unit at the date of expiration or
3 termination, at a rent not greater than the amount set forth by the
4 regulatory agreement prior to the date of expiration or
5 termination, until the earliest of any of the following occur:

6 (A) The household's income exceeds 140 percent of the
7 maximum eligible income specified in the regulatory agreement
8 for reserved units.

9 (B) The household voluntarily moves or is evicted for "good
10 cause." "Good cause" for the purposes of this section, means the
11 nonpayment of rent or allegation of facts necessary to prove
12 major, or repeated minor, violations of material provisions of the
13 occupancy agreement which detrimentally affect the health and
14 safety of other persons or the structure, the fiscal integrity of the
15 development, or the purposes or special programs of the
16 development.

17 (C) Thirty years after the date of the commencement of the
18 qualified project period.

19 (D) The sponsor pays the relocation assistance and benefits to
20 tenants as provided in subdivision (b) of Section 7264 of the
21 Government Code.

22 (3) As used in this subdivision, "qualified project period" shall
23 have the meaning specified in, and shall be determined in
24 accordance with the provisions of, subsection (d) of Section 142
25 of the Internal Revenue Code of 1986, as amended, and United
26 States Treasury regulations and rulings promulgated pursuant
27 thereto.

28 (e) Provide counseling, referral, and advisory services to
29 persons and families of low or moderate income in connection
30 with the purchase, rental, occupancy, maintenance, or repair of
31 housing.

32 (f) Provide the security which the authority deems necessary
33 for the protection of a project and its inhabitants.

34 (g) Assist housing projects pursuant to Section 34312.3.

35 (h) Acquire, plan, undertake, construct, improve, develop,
36 maintain, and operate land on which mobilehomes or a
37 mobilehome park are, or may be, located, so long as not less than
38 20 percent of the mobilehomes are designated for occupancy by,
39 or are occupied by, persons of low income. For purposes of this
40 subdivision, "mobilehome" has the meaning specified in Section

1 18008, and “mobilehome park” has the meaning specified in
2 Section 18214.

3 SEC. 5. Section 12206 of the Revenue and Taxation Code is
4 amended to read:

5 12206. (a) (1) There shall be allowed as a credit against the
6 “tax” (as defined by Section 12201) a state low-income housing
7 tax credit in an amount equal to the amount determined in
8 subdivision (c), computed in accordance with Section 42 of the
9 Internal Revenue Code, except as otherwise provided in this
10 section.

11 (2) “Taxpayer,” for purposes of this section, means the sole
12 owner in the case of a “C” corporation, the partners in the case of
13 a partnership, and the shareholders in the case of an “S”
14 corporation.

15 (3) “Housing sponsor,” for purposes of this section, means the
16 sole owner in the case of a “C” corporation, the partnership in the
17 case of a partnership, and the “S” corporation in the case of an S
18 corporation.

19 (b) (1) The amount of the credit allocated to any housing
20 sponsor shall be authorized by the California Tax Credit
21 Allocation Committee, or any successor thereof, based on a
22 project’s need for the credit for economic feasibility in
23 accordance with the requirements of this section.

24 (A) The low-income housing project shall be located in
25 California and shall meet either of the following requirements:

26 (i) The project’s housing sponsor shall have been allocated by
27 the California Tax Credit Allocation Committee a credit for
28 federal income tax purposes under Section 42 of the Internal
29 Revenue Code.

30 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
31 Internal Revenue Code.

32 (B) The California Tax Credit Allocation Committee shall not
33 require fees for the credit under this section in addition to those
34 fees required for applications for the tax credit pursuant to
35 Section 42 of the Internal Revenue Code. The committee may
36 require a fee if the application for the credit under this section is
37 submitted in a calendar year after the year the application is
38 submitted for the federal tax credit.

1 (2) (A) The California Tax Credit Allocation Committee shall
2 certify to the housing sponsor the amount of tax credit under this
3 section allocated to the housing sponsor for each credit period.

4 (B) In the case of a partnership or an S corporation, the
5 housing sponsor shall provide a copy of the California Tax Credit
6 Allocation Committee certification to the taxpayer.

7 (C) The taxpayer shall attach a copy of the certification to any
8 return upon which a tax credit is claimed under this section.

9 (D) In the case of a failure to attach a copy of the certification
10 for the year to the return in which a tax credit is claimed under
11 this section, no credit under this section shall be allowed for that
12 year until a copy of that certification is provided.

13 (E) All elections made by the taxpayer pursuant to Section 42
14 of the Internal Revenue Code shall apply to this section.

15 (F) No credit shall be allocated under this section to buildings
16 located in a difficult development area or a qualified census tract
17 as defined in Section 42 of the Internal Revenue Code for which
18 the eligible basis of a new building or the rehabilitation
19 expenditure of an existing building is 130 percent of that amount
20 pursuant to Section 42(d)(5)(C) of the Internal Revenue Code,
21 unless the committee reduces the amount of federal credit, with
22 the approval of the applicant, so that the combined amount of
23 federal and state credit shall not exceed the total credit allowable
24 pursuant to this section and Section 42(b) of the Internal Revenue
25 Code, computed without regard to Section 42(d)(5)(C) of the
26 Internal Revenue Code.

27 (c) Section 42(b) of the Internal Revenue Code shall be
28 modified as follows:

29 (1) In the case of any qualified low-income building that
30 receives an allocation after 1989 and is a new building not
31 federally subsidized, the term “applicable percentage” means the
32 following:

33 (A) For each of the first three years, the percentage prescribed
34 by the Secretary of the Treasury for new buildings that are not
35 federally subsidized for the taxable year, determined in
36 accordance with the requirements of Section 42(b)(2) of the
37 Internal Revenue Code, in lieu of the percentage prescribed in
38 Section 42(b)(1)(A) of the Internal Revenue Code.

39 (B) For the fourth year, the difference between 30 percent and
40 the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term “at risk of conversion,” with respect to an existing building means a building that satisfies all of the following criteria:

~~(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization, unless that organization is exempt from tax pursuant to Section 501(c)(3) of the Internal Revenue Code.~~

~~(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987, anytime in the five calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action. “Federally assisted” includes any building that is “at risk of conversion” and financed by tax-exempt private activity bonds, as defined by Section 142(d) of the Internal Revenue Code, or by qualified 501(c)(3) bonds meeting the requirements of Section 147 of the Internal Revenue Code.~~

(A) The building is an assisted housing development for which a prepayment, termination, or expiration of rental restrictions, as those terms are defined in subdivision (a) of Section 65863.10 of the Government Code, has occurred, will occur, or is eligible to occur within five years before or after the date of application.

~~(C)~~

(B) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

1 ~~(D)~~

2 (C) The building satisfies the requirements of Section 42(e) of
3 the Internal Revenue Code regarding rehabilitation expenditures,
4 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
5 apply.

6 (d) The term “qualified low-income housing project” as
7 defined in Section 42(c)(2) of the Internal Revenue Code is
8 modified by adding the following requirements:

9 (1) The taxpayer shall be entitled to receive a cash distribution
10 from the operations of the project, after funding required
11 reserves, which, at the election of the taxpayer, is equal to:

12 (A) An amount not to exceed 8 percent of the lesser of:

13 (i) The owner equity which shall include the amount of the
14 capital contributions actually paid to the housing sponsor and
15 shall not include any amounts until they are paid on an investor
16 note.

17 (ii) Twenty percent of the adjusted basis of the building as of
18 the close of the first taxable year of the credit period.

19 (B) The amount of the cashflow from those units in the
20 building that are not low-income units. For purposes of
21 computing cashflow under this subparagraph, operating costs
22 shall be allocated to the low-income units using the “floor space
23 fraction,” as defined in Section 42 of the Internal Revenue Code.

24 (C) Any amount allowed to be distributed under subparagraph
25 (A) that is not available for distribution during the first five years
26 of the compliance period may accumulate and be distributed any
27 time during the first 15 years of the compliance period but not
28 thereafter.

29 (2) The limitation on return shall apply in the aggregate to the
30 partners if the housing sponsor is a partnership and in the
31 aggregate to the shareholders if the housing sponsor is an S
32 corporation.

33 (3) The housing sponsor shall apply any cash available for
34 distribution in excess of the amount eligible to be distributed
35 under paragraph (1) to reduce the rent on rent-restricted units or
36 to increase the number of rent-restricted units subject to the tests
37 of Section 42(g)(1) of the Internal Revenue Code.

38 (e) The provisions of Section 42(f) of the Internal Revenue
39 Code shall be modified as follows:

1 (1) The term “credit period” as defined in Section 42(f)(1) of
2 the Internal Revenue Code is modified by substituting “four
3 taxable years” for “10 taxable years.”

4 (2) The special rule for the first taxable year of the credit
5 period under Section 42(f)(2) of the Internal Revenue Code shall
6 not apply to the tax credit under this section.

7 (3) Section 42(f)(3) of the Internal Revenue Code is modified
8 to read:

9 If, as of the close of any taxable year in the compliance period,
10 after the first year of the credit period, the qualified basis of any
11 building exceeds the qualified basis of that building as of the
12 close of the first year of the credit period, the housing sponsor, to
13 the extent of its tax credit allocation, shall be eligible for a credit
14 on the excess in an amount equal to the applicable percentage
15 determined pursuant to subdivision (c) for the four-year period
16 beginning with the later of the taxable years in which the increase
17 in qualified basis occurs.

18 (f) The provisions of Section 42(h) of the Internal Revenue
19 Code shall be modified as follows:

20 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
21 applicable and instead the following provisions shall be
22 applicable:

23 The total amount for the four-year credit period of the housing
24 credit dollars allocated in a calendar year to any building shall
25 reduce the aggregate housing credit dollar amount of the
26 California Tax Credit Allocation Committee for the calendar year
27 in which the allocation is made.

28 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
29 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
30 not be applicable.

31 (g) The aggregate housing credit dollar amount that may be
32 allocated annually by the California Tax Credit Allocation
33 Committee pursuant to this section, Section 17058, and Section
34 23610.5 shall be an amount equal to the sum of all the following:

35 (1) Seventy million dollars (\$70,000,000) for the 2001
36 calendar year, and, for the 2002 calendar year and each calendar
37 year thereafter, seventy million dollars (\$70,000,000) increased
38 by the percentage, if any, by which the Consumer Price Index for
39 the preceding calendar year exceeds the Consumer Price Index
40 for the 2001 calendar year. For the purposes of this paragraph,

1 the term “Consumer Price Index” means the last Consumer Price
2 Index for all urban consumers published by the federal
3 Department of Labor.

4 (2) The unused housing credit ceiling, if any, for the preceding
5 calendar years.

6 (3) The amount of housing credit ceiling returned in the
7 calendar year. For purposes of this paragraph, the amount of
8 housing credit dollar amount returned in the calendar year equals
9 the housing credit dollar amount previously allocated to any
10 project that does not become a qualified low-income housing
11 project within the period required by this section or to any project
12 with respect to which an allocation is canceled by mutual consent
13 of the California Tax Credit Allocation Committee and the
14 allocation recipient.

15 (h) The term “compliance period” as defined in Section
16 42(i)(1) of the Internal Revenue Code is modified to mean, with
17 respect to any building, the period of 30 consecutive taxable
18 years beginning with the first taxable year of the credit period
19 with respect thereto.

20 (i) (1) Section 42(j) of the Internal Revenue Code shall not be
21 applicable and the provisions in paragraph (2) shall be substituted
22 in its place.

23 (2) The requirements of this section shall be set forth in a
24 regulatory agreement between the California Tax Credit
25 Allocation Committee and the housing sponsor, which agreement
26 shall be subordinated, when required, to any lien or encumbrance
27 of any banks or other institutional lenders to the project. The
28 regulatory agreement entered into pursuant to subdivision (f) of
29 Section 50199.14 of the Health and Safety Code, shall apply,
30 providing the agreement includes all of the following provisions:

31 (A) A term not less than the compliance period.

32 (B) A requirement that the agreement be filed in the official
33 records of the county in which the qualified low-income housing
34 project is located.

35 (C) A provision stating which state and local agencies can
36 enforce the regulatory agreement in the event the housing
37 sponsor fails to satisfy any of the requirements of this section.

38 (D) A provision that the regulatory agreement shall be deemed
39 a contract enforceable by tenants as third-party beneficiaries
40 thereto and which allows individuals, whether prospective,

1 present, or former occupants of the building, who meet the
2 income limitation applicable to the building, the right to enforce
3 the regulatory agreement in any state court.

4 (E) A provision incorporating the requirements of Section 42
5 of the Internal Revenue Code as modified by this section.

6 (F) A requirement that the housing sponsor notify the
7 California Tax Credit Allocation Committee or its designee and
8 the local agency that can enforce the regulatory agreement if
9 there is a determination by the Internal Revenue Service that the
10 project is not in compliance with Section 42(g) of the Internal
11 Revenue Code.

12 (G) A requirement that the housing sponsor, as security for the
13 performance of the housing sponsor's obligations under the
14 regulatory agreement, assign the housing sponsor's interest in
15 rents that it receives from the project, provided that until there is
16 a default under the regulatory agreement, the housing sponsor is
17 entitled to collect and retain the rents.

18 (H) The remedies available in the event of a default under the
19 regulatory agreement that is not cured within a reasonable cure
20 period, include, but are not limited to, allowing any of the parties
21 designated to enforce the regulatory agreement to collect all rents
22 with respect to the project; taking possession of the project and
23 operating the project in accordance with the regulatory
24 agreement until the enforcer determines the housing sponsor is in
25 a position to operate the project in accordance with the regulatory
26 agreement; applying to any court for specific performance;
27 securing the appointment of a receiver to operate the project; or
28 any other relief as may be appropriate.

29 (j) (1) The committee shall allocate the housing credit on a
30 regular basis consisting of two or more periods in each calendar
31 year during which applications may be filed and considered. The
32 committee shall establish application filing deadlines, the
33 maximum percentage of federal and state low-income housing
34 tax credit ceiling which may be allocated by the committee in
35 that period, and the approximate date on which allocations shall
36 be made. If the enactment of federal or state law, the adoption of
37 rules or regulations, or other similar events prevent the use of
38 two allocation periods, the committee may reduce the number of
39 periods and adjust the filing deadlines, maximum percentage of
40 credit allocated, and the allocation dates.

1 (2) The committee shall adopt a qualified allocation plan, as
2 provided in Section 42(m)(1) of the Internal Revenue Code. In
3 adopting this plan, the committee shall comply with the
4 provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the
5 Internal Revenue Code.

6 (3) Notwithstanding Section 42(m) of the Internal Revenue
7 Code, the California Tax Credit Allocation Committee shall
8 allocate housing credits in accordance with the qualified
9 allocation plan and regulations, which shall include the following
10 provisions:

11 (A) All housing sponsors, as defined by paragraph (3) of
12 subdivision (a), shall demonstrate at the time the application is
13 filed with the committee that the project meets the following
14 threshold requirements:

15 (i) The housing sponsor shall demonstrate there is a need and
16 demand for low-income housing in the community or region for
17 which it is proposed.

18 (ii) The project's proposed financing, including tax credit
19 proceeds, shall be sufficient to complete the project and that the
20 proposed operating income shall be adequate to operate the
21 project for the extended use period.

22 (iii) The project shall have enforceable financing
23 commitments, either construction or permanent financing, for at
24 least 50 percent of the total estimated financing of the project.

25 (iv) The housing sponsor shall have and maintain control of
26 the site for the project.

27 (v) The housing sponsor shall demonstrate that the project
28 complies with all applicable local land use and zoning
29 ordinances.

30 (vi) The housing sponsor shall demonstrate that the project
31 development team has the experience and the financial capacity
32 to ensure project completion and operation for the extended use
33 period.

34 (vii) The housing sponsor shall demonstrate the amount of tax
35 credit that is necessary for the financial feasibility of the project
36 and its viability as a qualified low-income housing project
37 throughout the extended use period, taking into account operating
38 expenses, a supportable debt service, reserves, funds set aside for
39 rental subsidies, and required equity, and a development fee that
40 does not exceed a specified percentage of the eligible basis of the

1 project prior to inclusion of the development fee in the eligible
2 basis, as determined by the committee.

3 (B) The committee shall give a preference to those projects
4 satisfying all of the threshold requirements of subparagraph (A)
5 if both of the following apply:

6 (i) The project serves the lowest income tenants at rents
7 affordable to those tenants.

8 (ii) The project is obligated to serve qualified tenants for the
9 longest period.

10 (C) In addition to the provisions of subparagraphs (A) and (B),
11 the committee shall use the following criteria in allocating
12 housing credits:

13 (i) Projects serving large families in which a substantial
14 number, as defined by the committee, of all residential units is
15 comprised of low-income units with three and more bedrooms.

16 (ii) Projects providing single room occupancy units serving
17 very low income tenants.

18 (iii) Existing projects that are “at risk of conversion,” as
19 defined by paragraph (3) of subdivision (c).

20 (iv) Projects for which a public agency provides direct or
21 indirect long-term financial support for at least 15 percent of the
22 total project development costs or projects for which the owner’s
23 equity constitutes at least 30 percent of the total project
24 development costs.

25 (v) Projects that provide tenant amenities not generally
26 available to residents of low-income housing projects.

27 (4) For purposes of allocating credits pursuant to this section,
28 the committee shall not give preference to any project by virtue
29 of the date of submission of its application except to break a tie
30 when two or more of the projects have an equal rating.

31 (k) Section 42(l) of the Internal Revenue Code shall be
32 modified as follows:

33 The term “secretary” shall be replaced by the term “California
34 Franchise Tax Board.”

35 (l) In the case where the state credit allowed under this section
36 exceeds the “tax,” the excess may be carried over to reduce the
37 “tax” in the following year, and succeeding years if necessary,
38 until the credit has been exhausted.

39 (m) The provisions of Section 11407(a) of Public Law
40 101-508, relating to the effective date of the extension of the

1 low-income housing credit, shall apply to calendar years after
2 1993.

3 (n) The provisions of Section 11407(c) of Public Law
4 101-508, relating to election to accelerate credit, shall not apply.

5 (o) This section shall remain in effect for as long as Section 42
6 of the Internal Revenue Code, relating to low-income housing
7 credits, remains in effect.

8 SEC. 6. Section 17058 of the Revenue and Taxation Code is
9 amended to read:

10 17058. (a) (1) There shall be allowed as a credit against the
11 amount of net tax (as defined in Section 17039) a state
12 low-income housing credit in an amount equal to the amount
13 determined in subdivision (c), computed in accordance with the
14 provisions of Section 42 of the Internal Revenue Code, except as
15 otherwise provided in this section.

16 (2) "Taxpayer" for purposes of this section means the sole
17 owner in the case of an individual, the partners in the case of a
18 partnership, and the shareholders in the case of an "S"
19 corporation.

20 (3) "Housing sponsor" for purposes of this section means the
21 sole owner in the case of an individual, the partnership in the
22 case of a partnership, and the "S" corporation in the case of an
23 "S" corporation.

24 (b) (1) The amount of the credit allocated to any housing
25 sponsor shall be authorized by the California Tax Credit
26 Allocation Committee, or any successor thereof, based on a
27 project's need for the credit for economic feasibility in
28 accordance with the requirements of this section.

29 (A) The low-income housing project shall be located in
30 California and shall meet either of the following requirements:

31 (i) The project's housing sponsor shall have been allocated by
32 the California Tax Credit Allocation Committee a credit for
33 federal income tax purposes under Section 42 of the Internal
34 Revenue Code.

35 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
36 Internal Revenue Code.

37 (B) The California Tax Credit Allocation Committee shall not
38 require fees for the credit under this section in addition to those
39 fees required for applications for the tax credit pursuant to
40 Section 42 of the Internal Revenue Code. The committee may

1 require a fee if the application for the credit under this section is
2 submitted in a calendar year after the year the application is
3 submitted for the federal tax credit.

4 (2) (A) The California Tax Credit Allocation Committee shall
5 certify to the housing sponsor the amount of tax credit under this
6 section allocated to the housing sponsor for each credit period.

7 (B) In the case of a partnership or an “S” corporation, the
8 housing sponsor shall provide a copy of the California Tax Credit
9 Allocation Committee certification to the taxpayer.

10 (C) The taxpayer shall, upon request, provide a copy of the
11 certification to the Franchise Tax Board.

12 (D) All elections made by the taxpayer pursuant to Section 42
13 of the Internal Revenue Code shall apply to this section.

14 (E) For buildings located in designated difficult development
15 areas or qualified census tracts as defined in Section 42(d)(5)(C)
16 of the Internal Revenue Code, credits may be allocated under this
17 section in the amounts prescribed in subdivision (c), provided
18 that the amount of credit allocated under Section 42 of the
19 Internal Revenue Code is computed on 100 percent of the
20 qualified basis of the building.

21 (c) Section 42(b) of the Internal Revenue Code shall be
22 modified as follows:

23 (1) In the case of any qualified low-income building placed in
24 service by the housing sponsor during 1987, the term “applicable
25 percentage” means 9 percent for each of the first three years and
26 3 percent for the fourth year for new buildings (whether or not
27 the building is federally subsidized) and for existing buildings.

28 (2) In the case of any qualified low-income building that
29 receives an allocation after 1989 and is a new building not
30 federally subsidized, the term “applicable percentage” means the
31 following:

32 (A) For each of the first three years, the percentage prescribed
33 by the Secretary of the Treasury for new buildings that are not
34 federally subsidized for the taxable year, determined in
35 accordance with the requirements of Section 42(b)(2) of the
36 Internal Revenue Code, in lieu of the percentage prescribed in
37 Section 42(b)(1)(A) of the Internal Revenue Code.

38 (B) For the fourth year, the difference between 30 percent and
39 the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term “at risk of conversion,” with respect to an existing building means a building that satisfies all of the following criteria:

~~(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization, unless that organization is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.~~

~~(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987, anytime in the five calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action. “Federally assisted” includes any building that is “at risk of conversion” and financed by tax-exempt private activity bonds, as defined by Section 142(d) of the Internal Revenue Code, or by qualified 501(c)(3) bonds meeting the requirements of Section 147 of the Internal Revenue Code.~~

(A) The building is an assisted housing development for which a prepayment, termination, or expiration of rental restrictions, as those terms are defined in subdivision (a) of Section 65863.10 of the Government Code, has occurred, will occur, or is eligible to occur within five years before or after the date of application.

~~(C)~~

(B) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

1 ~~(D)~~

2 (C) The building satisfies the requirements of Section 42(e) of
3 the Internal Revenue Code regarding rehabilitation expenditures,
4 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
5 apply.

6 (d) The term “qualified low-income housing project” as
7 defined in Section 42(c)(2) of the Internal Revenue Code is
8 modified by adding the following requirements:

9 (1) The taxpayer shall be entitled to receive a cash distribution
10 from the operations of the project, after funding required
11 reserves, that, at the election of the taxpayer, is equal to:

12 (A) An amount not to exceed 8 percent of the lesser of:

13 (i) The owner equity that shall include the amount of the
14 capital contributions actually paid to the housing sponsor and
15 shall not include any amounts until they are paid on an investor
16 note.

17 (ii) Twenty percent of the adjusted basis of the building as of
18 the close of the first taxable year of the credit period.

19 (B) The amount of the cashflow from those units in the
20 building that are not low-income units. For purposes of
21 computing cashflow under this subparagraph, operating costs
22 shall be allocated to the low-income units using the “floor space
23 fraction,” as defined in Section 42 of the Internal Revenue Code.

24 (C) Any amount allowed to be distributed under subparagraph
25 (A) that is not available for distribution during the first five years
26 of the compliance period may be accumulated and distributed
27 any time during the first 15 years of the compliance period but
28 not thereafter.

29 (2) The limitation on return shall apply in the aggregate to the
30 partners if the housing sponsor is a partnership and in the
31 aggregate to the shareholders if the housing sponsor is an “S”
32 corporation.

33 (3) The housing sponsor shall apply any cash available for
34 distribution in excess of the amount eligible to be distributed
35 under paragraph (1) to reduce the rent on rent-restricted units or
36 to increase the number of rent-restricted units subject to the tests
37 of Section 42(g)(1) of the Internal Revenue Code.

38 (e) The provisions of Section 42(f) of the Internal Revenue
39 Code shall be modified as follows:

1 (1) The term “credit period” as defined in Section 42(f)(1) of
2 the Internal Revenue Code is modified by substituting “four
3 taxable years” for “10 taxable years.”

4 (2) The special rule for the first taxable year of the credit
5 period under Section 42(f)(2) of the Internal Revenue Code shall
6 not apply to the tax credit under this section.

7 (3) Section 42(f)(3) of the Internal Revenue Code is modified
8 to read:

9 If, as of the close of any taxable year in the compliance period,
10 after the first year of the credit period, the qualified basis of any
11 building exceeds the qualified basis of that building as of the
12 close of the first year of the credit period, the housing sponsor, to
13 the extent of its tax credit allocation, shall be eligible for a credit
14 on the excess in an amount equal to the applicable percentage
15 determined pursuant to subdivision (c) for the four-year period
16 beginning with the taxable year in which the increase in qualified
17 basis occurs.

18 (f) The provisions of Section 42(h) of the Internal Revenue
19 Code shall be modified as follows:

20 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
21 applicable and instead the following provisions shall be
22 applicable:

23 The total amount for the four-year period of the housing credit
24 dollars allocated in a calendar year to any building shall reduce
25 the aggregate housing credit dollar amount of the California Tax
26 Credit Allocation Committee for the calendar year in which the
27 allocation is made.

28 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
29 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
30 not be applicable to this section.

31 (g) The aggregate housing credit dollar amount which may be
32 allocated annually by the California Tax Credit Allocation
33 Committee pursuant to this section, Section 12206, and Section
34 23610.5 shall be an amount equal to the sum of all the following:

35 (1) Seventy million dollars (\$70,000,000) for the 2001
36 calendar year, and, for the 2002 calendar year and each calendar
37 year thereafter, seventy million dollars (\$70,000,000) increased
38 by the percentage, if any, by which the Consumer Price Index for
39 the preceding calendar year exceeds the Consumer Price Index
40 for the 2001 calendar year. For the purposes of this paragraph,

1 the term “Consumer Price Index” means the last Consumer Price
2 Index for all urban consumers published by the federal
3 Department of Labor.

4 (2) The unused housing credit ceiling, if any, for the preceding
5 calendar years.

6 (3) The amount of housing credit ceiling returned in the
7 calendar year. For purposes of this paragraph, the amount of
8 housing credit dollar amount returned in the calendar year equals
9 the housing credit dollar amount previously allocated to any
10 project that does not become a qualified low-income housing
11 project within the period required by this section or to any project
12 with respect to which an allocation is canceled by mutual consent
13 of the California Tax Credit Allocation Committee and the
14 allocation recipient.

15 (h) The term “compliance period” as defined in Section
16 42(i)(1) of the Internal Revenue Code is modified to mean, with
17 respect to any building, the period of 30 consecutive taxable
18 years beginning with the first taxable year of the credit period
19 with respect thereto.

20 (i) Section 42(j) of the Internal Revenue Code shall not be
21 applicable and the following requirements of this section shall be
22 set forth in a regulatory agreement between the California Tax
23 Credit Allocation Committee and the housing sponsor, which
24 agreement shall be subordinated, when required, to any lien or
25 encumbrance of any banks or other institutional lenders to the
26 project. The regulatory agreement entered into pursuant to
27 subdivision (f) of Section 50199.14 of the Health and Safety
28 Code shall apply, providing the agreement includes all of the
29 following provisions:

30 (1) A term not less than the compliance period.

31 (2) A requirement that the agreement be filed in the official
32 records of the county in which the qualified low-income housing
33 project is located.

34 (3) A provision stating which state and local agencies can
35 enforce the regulatory agreement in the event the housing
36 sponsor fails to satisfy any of the requirements of this section.

37 (4) A provision that the regulatory agreement shall be deemed
38 a contract enforceable by tenants as third-party beneficiaries
39 thereto and which allows individuals, whether prospective,
40 present, or former occupants of the building, who meet the

1 income limitation applicable to the building, the right to enforce
2 the regulatory agreement in any state court.

3 (5) A provision incorporating the requirements of Section 42
4 of the Internal Revenue Code as modified by this section.

5 (6) A requirement that the housing sponsor notify the
6 California Tax Credit Allocation Committee or its designee if
7 there is a determination by the Internal Revenue Service that the
8 project is not in compliance with Section 42(g) of the Internal
9 Revenue Code.

10 (7) A requirement that the housing sponsor, as security for the
11 performance of the housing sponsor's obligations under the
12 regulatory agreement, assign the housing sponsor's interest in
13 rents that it receives from the project, provided that until there is
14 a default under the regulatory agreement, the housing sponsor is
15 entitled to collect and retain the rents.

16 (8) The remedies available in the event of a default under the
17 regulatory agreement that is not cured within a reasonable cure
18 period, include, but are not limited to, allowing any of the parties
19 designated to enforce the regulatory agreement to collect all rents
20 with respect to the project; taking possession of the project and
21 operating the project in accordance with the regulatory
22 agreement until the enforcer determines the housing sponsor is in
23 a position to operate the project in accordance with the regulatory
24 agreement; applying to any court for specific performance;
25 securing the appointment of a receiver to operate the project; or
26 any other relief as may be appropriate.

27 (j) (1) The committee shall allocate the housing credit on a
28 regular basis consisting of two or more periods in each calendar
29 year during which applications may be filed and considered. The
30 committee shall establish application filing deadlines, the
31 maximum percentage of federal and state low-income housing
32 tax credit ceiling that may be allocated by the committee in that
33 period, and the approximate date on which allocations shall be
34 made. If the enactment of federal or state law, the adoption of
35 rules or regulations or other similar events prevent the use of two
36 allocation periods, the committee may reduce the number of
37 periods and adjust the filing deadlines, maximum percentage of
38 credit allocated, and the allocation dates.

39 (2) The committee shall adopt a qualified allocation plan, as
40 provided in Section 42(m)(1) of the Internal Revenue Code. In

1 adopting this plan, the committee shall comply with the
2 provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the
3 Internal Revenue Code.

4 (3) Notwithstanding Section 42(m) of the Internal Revenue
5 Code, the California Tax Credit Allocation Committee shall
6 allocate housing credits in accordance with the qualified
7 allocation plan and regulations, which shall include the following
8 provisions:

9 (A) All housing sponsors, as defined by paragraph (3) of
10 subdivision (a), shall demonstrate at the time the application is
11 filed with the committee that the project meets the following
12 threshold requirements:

13 (i) The housing sponsor shall demonstrate there is a need and
14 demand for low-income housing in the community or region for
15 which it is proposed.

16 (ii) The project's proposed financing, including tax credit
17 proceeds, shall be sufficient to complete the project and that the
18 proposed operating income shall be adequate to operate the
19 project for the extended use period.

20 (iii) The project shall have enforceable financing
21 commitments, either construction or permanent financing, for at
22 least 50 percent of the total estimated financing of the project.

23 (iv) The housing sponsor shall have and maintain control of
24 the site for the project.

25 (v) The housing sponsor shall demonstrate that the project
26 complies with all applicable local land use and zoning
27 ordinances.

28 (vi) The housing sponsor shall demonstrate that the project
29 development team has the experience and the financial capacity
30 to ensure project completion and operation for the extended use
31 period.

32 (vii) The housing sponsor shall demonstrate the amount of tax
33 credit that is necessary for the financial feasibility of the project
34 and its viability as a qualified low-income housing project
35 throughout the extended use period, taking into account operating
36 expenses, a supportable debt service, reserves, funds set aside for
37 rental subsidies, and required equity, and a development fee that
38 does not exceed a specified percentage of the eligible basis of the
39 project prior to inclusion of the development fee in the eligible
40 basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 7. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a "C" corporation, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a "C" corporation, the partnership in the

1 case of a partnership, and the “S” corporation in the case of an
2 “S” corporation.

3 (b) (1) The amount of the credit allocated to any housing
4 sponsor shall be authorized by the California Tax Credit
5 Allocation Committee, or any successor thereof, based on a
6 project’s need for the credit for economic feasibility in
7 accordance with the requirements of this section.

8 (A) The low-income housing project shall be located in
9 California and shall meet either of the following requirements:

10 (i) The project’s housing sponsor has been allocated by the
11 California Tax Credit Allocation Committee a credit for federal
12 income tax purposes under Section 42 of the Internal Revenue
13 Code.

14 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
15 Internal Revenue Code.

16 (B) The California Tax Credit Allocation Committee shall not
17 require fees for the credit under this section in addition to those
18 fees required for applications for the tax credit pursuant to
19 Section 42 of the Internal Revenue Code. The committee may
20 require a fee if the application for the credit under this section is
21 submitted in a calendar year after the year the application is
22 submitted for the federal tax credit.

23 (2) (A) The California Tax Credit Allocation Committee shall
24 certify to the housing sponsor the amount of tax credit under this
25 section allocated to the housing sponsor for each credit period.

26 (B) In the case of a partnership or an “S” corporation, the
27 housing sponsor shall provide a copy of the California Tax Credit
28 Allocation Committee certification to the taxpayer.

29 (C) The taxpayer shall, upon request, provide a copy of the
30 certification to the Franchise Tax Board.

31 (D) All elections made by the taxpayer pursuant to Section 42
32 of the Internal Revenue Code shall apply to this section.

33 (E) For buildings located in designated difficult development
34 areas or qualified census tracts as defined in Section 42(d)(5)(C)
35 of the Internal Revenue Code, credits may be allocated under this
36 section in the amounts prescribed in subdivision (c), provided
37 that the amount of credit allocated under Section 42 of the
38 Internal Revenue Code is computed on 100 percent of the
39 qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term “applicable percentage” means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term “at risk of conversion,” with respect to an existing building means a building that satisfies all of the following criteria:

~~(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization, unless that organization is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.~~

~~(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987, anytime in the five~~

1 calendar years after the year of application to the California Tax
2 Credit Allocation Committee, and the purchaser has received
3 preliminary approval from the applicable federal agency for a
4 maximum level of incentives through a plan of action. “Federally
5 assisted” includes any building that is “at risk of conversion” and
6 financed by tax-exempt private activity bonds, as defined by
7 Section 142(d) of the Internal Revenue Code, or by qualified
8 501(c)(3) bonds meeting the requirements of Section 147 of the
9 Internal Revenue Code.

10 (A) *The building is an assisted housing development for which*
11 *a prepayment, termination, or expiration of rental restrictions, as*
12 *those terms are defined in subdivision (a) of Section 65863.10 of*
13 *the Government Code, has occurred, will occur, or is eligible to*
14 *occur within five years before or after the date of application.*

15 ~~(C)~~

16 (B) The person acquiring the building enters into a regulatory
17 agreement that requires the building to be operated in accordance
18 with the requirements of this section for a period equal to the
19 greater of 55 years or the life of the building.

20 ~~(D)~~

21 (C) The building satisfies the requirements of Section 42(e) of
22 the Internal Revenue Code regarding rehabilitation expenditures,
23 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
24 apply.

25 (d) The term “qualified low-income housing project” as
26 defined in Section 42(c)(2) of the Internal Revenue Code is
27 modified by adding the following requirements:

28 (1) The taxpayer shall be entitled to receive a cash distribution
29 from the operations of the project, after funding required
30 reserves, which, at the election of the taxpayer, shall be equal to:

31 (A) An amount not to exceed 8 percent of the lesser of:

32 (i) The owner equity, which shall include the amount of the
33 capital contributions actually paid to the housing sponsor and
34 shall not include any amounts until they are paid on an investor
35 note.

36 (ii) Twenty percent of the adjusted basis of the building as of
37 the close of the first taxable year of the credit period.

38 (B) The amount of the cashflow from those units in the
39 building that are not low-income units. For purposes of
40 computing cashflow under this subparagraph, operating costs

1 shall be allocated to the low-income units using the “floor space
2 fraction,” as defined in Section 42 of the Internal Revenue Code.

3 (C) Any amount allowed to be distributed under subparagraph
4 (A) that is not available for distribution during the first five years
5 of the compliance period may accumulate and be distributed at
6 any time during the first 15 years of the compliance period but
7 not thereafter.

8 (2) The limitation on return shall apply in the aggregate to the
9 partners if the housing sponsor is a partnership and in the
10 aggregate to the shareholders if the housing sponsor is an “S”
11 corporation.

12 (3) The housing sponsor shall apply any cash available for
13 distribution in excess of the amount eligible to be distributed
14 under paragraph (1) to reduce the rent on rent-restricted units or
15 to increase the number of rent-restricted units subject to the tests
16 of Section 42(g)(1) of the Internal Revenue Code.

17 (e) The provisions of Section 42(f) of the Internal Revenue
18 Code shall be modified as follows:

19 (1) The term “credit period” as defined in Section 42(f)(1) of
20 the Internal Revenue Code is modified by substituting “four
21 taxable years” for “10 taxable years.”

22 (2) The special rule for the first taxable year of the credit
23 period under Section 42(f)(2) of the Internal Revenue Code shall
24 not apply to the tax credit under this section.

25 (3) Section 42(f)(3) of the Internal Revenue Code is modified
26 to read:

27 If, as of the close of any taxable year in the compliance period,
28 after the first year of the credit period, the qualified basis of any
29 building exceeds the qualified basis of that building as of the
30 close of the first year of the credit period, the housing sponsor, to
31 the extent of its tax credit allocation, shall be eligible for a credit
32 on the excess in an amount equal to the applicable percentage
33 determined pursuant to subdivision (c) for the four-year period
34 beginning with the later of the taxable years in which the increase
35 in qualified basis occurs.

36 (f) The provisions of Section 42(h) of the Internal Revenue
37 Code shall be modified as follows:

38 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
39 applicable and instead the following provisions shall be
40 applicable:

1 The total amount for the four-year credit period of the housing
2 credit dollars allocated in a calendar year to any building shall
3 reduce the aggregate housing credit dollar amount of the
4 California Tax Credit Allocation Committee for the calendar year
5 in which the allocation is made.

6 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
7 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
8 not be applicable.

9 (g) The aggregate housing credit dollar amount that may be
10 allocated annually by the California Tax Credit Allocation
11 Committee pursuant to this section, Section 12206, and Section
12 17058 shall be an amount equal to the sum of all the following:

13 (1) Seventy million dollars (\$70,000,000) for the 2001
14 calendar year, and, for the 2002 calendar year and each calendar
15 year thereafter, seventy million dollars (\$70,000,000) increased
16 by the percentage, if any, by which the Consumer Price Index for
17 the preceding calendar year exceeds the Consumer Price Index
18 for the 2001 calendar year. For the purposes of this paragraph,
19 the term “Consumer Price Index” means the last Consumer Price
20 Index for all urban consumers published by the federal
21 Department of Labor.

22 (2) The unused housing credit ceiling, if any, for the preceding
23 calendar years.

24 (3) The amount of housing credit ceiling returned in the
25 calendar year. For purposes of this paragraph, the amount of
26 housing credit dollar amount returned in the calendar year equals
27 the housing credit dollar amount previously allocated to any
28 project that does not become a qualified low-income housing
29 project within the period required by this section or to any project
30 with respect to which an allocation is canceled by mutual consent
31 of the California Tax Credit Allocation Committee and the
32 allocation recipient.

33 (h) The term “compliance period” as defined in Section
34 42(i)(1) of the Internal Revenue Code is modified to mean, with
35 respect to any building, the period of 30 consecutive taxable
36 years beginning with the first taxable year of the credit period
37 with respect thereto.

38 (i) Section 42(j) of the Internal Revenue Code shall not be
39 applicable and the following shall be substituted in its place:

1 The requirements of this section shall be set forth in a
2 regulatory agreement between the California Tax Credit
3 Allocation Committee and the housing sponsor, and this
4 agreement shall be subordinated, when required, to any lien or
5 encumbrance of any banks or other institutional lenders to the
6 project. The regulatory agreement entered into pursuant to
7 subdivision (f) of Section 50199.14 of the Health and Safety
8 Code shall apply, provided that the agreement includes all of the
9 following provisions:

10 (1) A term not less than the compliance period.

11 (2) A requirement that the agreement be filed in the official
12 records of the county in which the qualified low-income housing
13 project is located.

14 (3) A provision stating which state and local agencies can
15 enforce the regulatory agreement in the event the housing
16 sponsor fails to satisfy any of the requirements of this section.

17 (4) A provision that the regulatory agreement shall be deemed
18 a contract enforceable by tenants as third-party beneficiaries
19 thereto, and that allows individuals, whether prospective, present,
20 or former occupants of the building, who meet the income
21 limitation applicable to the building the right to enforce the
22 regulatory agreement in any state court.

23 (5) A provision incorporating the requirements of Section 42
24 of the Internal Revenue Code as modified by this section.

25 (6) A requirement that the housing sponsor notify the
26 California Tax Credit Allocation Committee or its designee if
27 there is a determination by the Internal Revenue Service that the
28 project is not in compliance with Section 42(g) of the Internal
29 Revenue Code.

30 (7) A requirement that the housing sponsor, as security for the
31 performance of the housing sponsor's obligations under the
32 regulatory agreement, assign the housing sponsor's interest in
33 rents that it receives from the project, provided that until there is
34 a default under the regulatory agreement, the housing sponsor is
35 entitled to collect and retain the rents.

36 (8) A provision that the remedies available in the event of a
37 default under the regulatory agreement that is not cured within a
38 reasonable cure period include, but are not limited to, allowing
39 any of the parties designated to enforce the regulatory agreement
40 to collect all rents with respect to the project; taking possession

1 of the project and operating the project in accordance with the
2 regulatory agreement until the enforcer determines the housing
3 sponsor is in a position to operate the project in accordance with
4 the regulatory agreement; applying to any court for specific
5 performance; securing the appointment of a receiver to operate
6 the project; or any other relief as may be appropriate.

7 (j) (1) The committee shall allocate the housing credit on a
8 regular basis consisting of two or more periods in each calendar
9 year during which applications may be filed and considered. The
10 committee shall establish application filing deadlines, the
11 maximum percentage of federal and state low-income housing
12 tax credit ceiling that may be allocated by the committee in that
13 period, and the approximate date on which allocations shall be
14 made. If the enactment of federal or state law, the adoption of
15 rules or regulations, or other similar events prevent the use of
16 two allocation periods, the committee may reduce the number of
17 periods and adjust the filing deadlines, maximum percentage of
18 credit allocated, and allocation dates.

19 (2) The committee shall adopt a qualified allocation plan, as
20 provided in Section 42(m)(1) of the Internal Revenue Code. In
21 adopting this plan, the committee shall comply with the
22 provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the
23 Internal Revenue Code.

24 (3) Notwithstanding Section 42(m) of the Internal Revenue
25 Code, the California Tax Credit Allocation Committee shall
26 allocate housing credits in accordance with the qualified
27 allocation plan and regulations, which shall include the following
28 provisions:

29 (A) All housing sponsors, as defined by paragraph (3) of
30 subdivision (a), shall demonstrate at the time the application is
31 filed with the committee that the project meets the following
32 threshold requirements:

33 (i) The housing sponsor shall demonstrate that there is a need
34 for low-income housing in the community or region for which it
35 is proposed.

36 (ii) The project's proposed financing, including tax credit
37 proceeds, shall be sufficient to complete the project and shall be
38 adequate to operate the project for the extended use period.

1 (iii) The project shall have enforceable financing
2 commitments, either construction or permanent financing, for at
3 least 50 percent of the total estimated financing of the project.

4 (iv) The housing sponsor shall have and maintain control of
5 the site for the project.

6 (v) The housing sponsor shall demonstrate that the project
7 complies with all applicable local land use and zoning
8 ordinances.

9 (vi) The housing sponsor shall demonstrate that the project
10 development team has the experience and the financial capacity
11 to ensure project completion and operation for the extended use
12 period.

13 (vii) The housing sponsor shall demonstrate the amount of tax
14 credit that is necessary for the financial feasibility of the project
15 and its viability as a qualified low-income housing project
16 throughout the extended use period, taking into account operating
17 expenses, a supportable debt service, reserves, funds set aside for
18 rental subsidies, and required equity, and a development fee that
19 does not exceed a specified percentage of the eligible basis of the
20 project prior to inclusion of the development fee in the eligible
21 basis, as determined by the committee.

22 (B) The committee shall give a preference to those projects
23 satisfying all of the threshold requirements of subparagraph (A)
24 if both of the following apply:

25 (i) The project serves the lowest income tenants at rents
26 affordable to those tenants.

27 (ii) The project is obligated to serve qualified tenants for the
28 longest period.

29 (C) In addition to the provisions of subparagraphs (A) and (B),
30 the committee shall use the following criteria in allocating
31 housing credits:

32 (i) Projects serving large families in which a substantial
33 number, as defined by the committee, of all residential units are
34 low-income units with three and more bedrooms.

35 (ii) Projects providing single-room occupancy units serving
36 very low income tenants.

37 (iii) Existing projects that are “at risk of conversion,” as
38 defined by paragraph (4) of subdivision (c).

39 (iv) Projects for which a public agency provides direct or
40 indirect long-term financial support for at least 15 percent of the

1 total project development costs or projects for which the owner's
2 equity constitutes at least 30 percent of the total project
3 development costs.

4 (v) Projects that provide tenant amenities not generally
5 available to residents of low-income housing projects.

6 (4) For purposes of allocating credits pursuant to this section,
7 the committee shall not give preference to any project by virtue
8 of the date of submission of its application except to break a tie
9 when two or more of the projects have an equal rating.

10 (5) Not less than 20 percent of the low-income housing tax
11 credits available annually under this section, Section 12206, and
12 Section 17058 shall be set aside for allocation to rural areas as
13 defined in Section 50199.21 of the Health and Safety Code. Any
14 amount of credit set aside for rural areas remaining on or after
15 October 31 of any calendar year shall be available for allocation
16 to any eligible project. No amount of credit set aside for rural
17 areas shall be considered available for any eligible project so
18 long as there are eligible rural applications pending on October
19 31.

20 (k) Section 42(l) of the Internal Revenue Code shall be
21 modified as follows:

22 The term "secretary" shall be replaced by the term "California
23 Franchise Tax Board."

24 (l) In the case where the state credit allowed under this section
25 exceeds the "tax," the excess may be carried over to reduce the
26 "tax" in the following year, and succeeding years if necessary,
27 until the credit has been exhausted.

28 (m) A project that received an allocation of a 1989 federal
29 housing credit dollar amount shall be eligible to receive an
30 allocation of a 1990 state housing credit dollar amount, subject to
31 all of the following conditions:

32 (1) The project was not placed in service prior to 1990.

33 (2) To the extent the amendments made to this section by the
34 Statutes of 1990 conflict with any provisions existing in this
35 section prior to those amendments, the prior provisions of law
36 shall prevail.

37 (3) Notwithstanding paragraph (2), a project applying for an
38 allocation under this subdivision shall be subject to the
39 requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, “affiliated corporation” has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that “100 percent” is substituted for “more than 50 percent” wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and “voting common stock” is substituted for “voting stock” wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision

1 (q), as amended, shall apply to taxable years beginning on or
2 after January 1, 1993.

O